

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ELVIRA MAY STANTON, Individually and
Derivatively on Behalf of NORTH HILLS PROPERTY
OWNERS' ASSOCIATION, INC.,

Plaintiffs,

vs.

Civ. No. 01-471 JP/LCS

NORTH HILLS PROPERTY OWNERS'
ASSOCIATION, INC., RICHARD BIBRA,
PATRICIA COLE, BILL CHARLTON,
FRANCES ELIZONDO, BARRY BALLINGER,
SCOTT WHEELER, RICHARD MAY, DOUBLE R
MANAGEMENT CO., GARY JOHNSON,
PROFESSIONAL CREDIT INTER-PRISE, INC.,
CHRISTINE LUCERO, THE CITY OF RIO RANCHO,
MAYOR JOHN JENNINGS, Collectively and Individually,

Defendants.

MEMORANDUM OPINION AND ORDER

On May 7, 2001, the *pro se* Plaintiffs filed a Motion to Quash (Strike Off) Notice and Removal of State District Court Cause No. D 1329-CV 0000 717 (Doc. No. 2) and Request for Setting (Doc. No. 3). The Court notes that on June 6, 2001, the Plaintiffs filed a Notice of Appeal (Doc. No. 10) with respect to their motion to remand and the Initial Scheduling Order (Doc. No. 6) entered by Magistrate Judge Smith. "While the filing of a timely notice of appeal divests the district court of jurisdiction, ... a premature notice of appeal is ineffective to transfer jurisdiction from the district court to the court of appeals." *Riggs v. Scrivner, Inc.*, 927 F.2d 1146, 1148 (10th Cir.), *cert. denied*, 502 U.S. 867 (1991)(citations omitted). Here, the Plaintiffs filed a Notice of Appeal before the Court has made any final appealable decision. *See* 28 U.S.C. §1291. The Notice of Appeal is, therefore, premature and this Court has jurisdiction to decide the

motion to remand.

This case was removed on the basis of federal question jurisdiction under 28 U.S.C. §§1331 and 1441(b). Plaintiffs' First Amended Complaint [sic] for Money Damages Declaratory and Injunctive Relief, filed March 28, 2001, contains claims made under the Americans with Disabilities Act, the Federal Fair Debt Collections Act, and 42 U.S.C. §1988. These federal claims are sufficient to bestow federal jurisdiction on this Court. Consequently, remand is inappropriate. Moreover, a hearing setting is unnecessary to decide this motion to remand.

IT IS ORDERED that Plaintiffs' Motion to Quash (Strike Off) Notice and Removal of State District Court Cause No. D 1329-CV 0000 717 (Doc. No. 2) and Request for Setting (Doc. No. 3) are both denied.


CHIEF UNITED STATES DISTRICT JUDGE